

REMARKS/ARGUMENTS

Reconsideration and allowance of this application is respectfully requested. Claim 35 has been amended above so as to give greater emphasis to some of the novel and patentable features set forth in the claim.

The rejection of claims 1-9, 12-17, 21, and 30-35 under 35 U.S.C. § 103(a) as allegedly being unpatentable over DiRienzo (U.S. Patent 6,006,191) in view of Newman et al. (U.S. Patent 6,035,276) is respectfully traversed.

As previously pointed out in applicant's 6/24/05 Amendment, at least one novel and patentable feature of Applicant's independent claims 1, 30 and 35 is believed to be the automatic verification of a service provider's qualifications for providing the services that are to be posted. For example, independent claim 1 requires "registering ... and automatically authenticating qualifications of said medical service provider ... upon obtaining registration information from said provider." As noted by the Examiner in the previous Office Action mailed 9/23/05, the DiRienzo '191 patent "fails to teach registering a medical service provider and automatically authenticating qualification of said medical service provider to perform a proffered medical service upon obtaining registration information". Applicant respectfully contends that neither the DiRienzo '191 patent nor the '276 Newman et al. patent, considered either alone or together, disclose or suggest a computerized method for arranging delivery of medical services that provides

automatic authenticating (i.e., verification) of a service provider's qualifications (i.e., "credentials") for providing a proffered service and posting that service online, as set forth in Applicant's independent claims 1, 30 and 35.

The 9/23/05 Office Action alleges that the '276 Newman et al. patent "teaches a medical practitioner credentialing system in which physician credentialing profiles containing physician credentialing information are stored into a system database with application forms and the credentials are verified". (See Office Action at page 4.) At the outset, Applicant respectfully disagrees with this contention and, in particular, with the characterization of the Newman et al. patent by the Office Action as teaching *verification* of provider credentials. The '276 Newman et al. patent describes only a method for *creating and storing information concerning the credentials* of a physician/provider for the purpose of conveniently generating provider application forms for presenting to a credentialing managing organization (see for example, column 2, lines 27-30) ... but does not teach or suggest performing an automated verification or authentication of a physician/provider's credentials. Basically, the Newman et al. patent essentially describes an on-line form filer program that uses a type of "universal application form" which once completed by the physician is then used by the credentialing managing organization to automatically fill out a variety of different application forms. Indeed, the '276 Newman et al. patent clearly distinguishes from Applicant's claims as evidenced, for example, by its stating that "the presently preferred method of the invention provides a

method to electronically store a common set of credentialing information relating to physicians ... for use in automatically generating a plurality of different provider application forms having different formats." ('276 patent at column 3, line 11).

Applicant contends that there is clearly no suggestion of performing automated verification or authentication of a provider's credentials in either reference. In addition, neither DiRienzo nor Newman et al. teach or suggest registering a medical service provider, as is also set forth by at least applicant's independent claim 1.

Applicant also contends that even having the benefit of the teachings of DiRienzo and Newman et al. it would not have been obvious to one of ordinary skill in the art at the time of Applicant's invention to "modify the biography postings taught by DiRienzo and include verifying credentials of the physician" as alleged in the 9/23/05 office action. Moreover, even if the DiRienzo system could be modified arguendo (in hindsight), the system disclosed by Newman et al. for generating different provider application forms would not result in providing the automatic qualifications verification feature as set forth in Applicant's independent claims 1, 30 and 35, or the automated accessing and retrieval of a bid-submitting patient's health and financial information as set forth in Applicant's independent claim 21, for at least the reasons stated below.

No references have been cited that provide a factual basis for the conclusion of what is alleged in the Office Action as being obvious, i.e., no teaching has been provided that suggests the obviousness of modifying DiRienzo's medical image exchange system

to perform automatic verification of a service provider credentials, as set forth at least in Applicant's independent claims 1, 30 and 35, or retrieval of a bid-submitting patient's health/financial information, as set forth in Applicant's independent claim 21. Thus, the Office Action sets forth a conclusion of obviousness, not a reason supporting the alleged obviousness of the present invention. It is axiomatic that the PTO has a burden under §103 to establish a prima facie case of obviousness. See *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984).

Applicant's independent claim 21 includes the novel and patentable feature of automatically accessing online one or more data sources to obtain information describing the health and/or financial condition of the prospective patient and forwarding that information along with the bid for services to associated service provider. As previously and currently presented, independent claim 21 recites "in response to receiving an online bid, *automatically accessing* a maintained database and/or one or more online commercial data resources to obtain information describing the *health and/or financial condition* of a bid-submitting prospective patient;..." (emphasis added). Applicant respectfully notes that neither the DiRienzo '191 patent nor Newman et al., considered either alone or together, disclose or suggest automatically accessing a maintained database or an online commercial data resource to obtain health or financial condition of a prospective patient, as set forth in Applicant's claim 21. Although, DiRienzo enables a diagnostic physician to access the patient's medical image that is to be analyzed, he does

not disclose automatic access of a patient's health or financial information. Likewise, Newman et al. also fail to teach or suggest automatic access of such information and the forwarding of such information to a provider along with a bid, as set forth in claim 21.

Similarly, independent claim 30, recites steps *performed by a computer* (i.e., not by the service provider or an on-line consumer) of "accessing one or more online commercial database sources containing medical certifications data and *verifying the authenticity* of qualifications of the medical service provider" (emphasis added). Applicant respectfully contends that neither DiRienzo nor Newman et al., considered either alone or together, disclose or suggest such features for at least the same reasons as set forth above.

With respect to independent claim 35, neither DiRienzo nor Newman et al., considered either alone or together, disclose or suggest the claimed features of: "establishing a computer-readable medical service provider identification code" or a computer programmed to "receive said medical service provider identification code from the medical service provider for verifying the identity of medical said service provider" or a computer programmed to "verify that the medical service provider is qualified to provide the offered specified medical service by using information stored in said service provider qualifier database", as set forth in applicant's independent claim 35 as currently amended.

Claims 2-17 and 31-34 are dependent on independent claims 1 and 30 and since neither DiRienzo nor Newman et al. teach or suggest the features or steps as discussed above and set forth in applicants' claims 1 and 30, it is respectfully submitted that these dependent claims are patentable over the combined teachings of these references.

In regard to the rejection of Applicant's dependent claim 5, applicant respectfully disagrees with the asserted "official notice" that "determining pricing on factors is old and well known in the art" and the resulting conclusion that "[T]herefore it would have been obvious ... to modify the teachings of DiRienzo and include pricing factors such as projected future utilization, facilities, minimum price and base price...". There is no teaching or suggestion in the prior art of record to compute an adjusted bid price based on these factors in the manner as set forth in Applicant's claim 5. Likewise, with respect to Applicant's dependent claims 8, 9, 13 and 14, applicant respectfully disagrees with the "official notice" asserted against these claims as well. There is clearly no teaching or suggestion in the prior art of record of the particular features set forth in these claims. Applicant, therefore, respectfully requests that the Examiner formally document each of the "official notice" allegations asserted with respect to claims 5, 8, 9, 13 and 14, in accordance with standard MPEP provisions.

Applicant contends that the Office Action improperly relies on hindsight reconstruction of the features of these claims based on the teachings of the instant application in reaching its obviousness determination. "To imbue one of ordinary skill in

the art with knowledge of the invention, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." See *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 1543, 220 USPQ 303, 312-13 (Fed. Cir. 1983). Only in view of the teachings of the instant application could the above rejections possibly be maintained.

The rejection of claims 10, 11 and 50-57 under 35 U.S.C. § 103(a) as allegedly being unpatentable over DiRienzo (U.S. Patent 6,006,191) in view of Newman et al. (U.S. Patent 6,035,276) and in further view of Feinberg (U.S. Patent 6,366,891) is respectfully traversed. The Feinberg reference is applied as allegedly disclosing "an on-line auction in which seller information includes prior history of seller's transactions, comments from previous buyers who purchased items *from the seller*, and other information *about the seller*." (emphasis added) See Office Action at page 9.

Applicant respectfully contends that dependent claims 10 and 11 are patentable over the combined teachings of these references for at least the reasons as set forth above with respect to independent claim 1 from which they depend. Applicant's claims 50-53 are directed toward feedback information from a *service provider* about the *patient* (a winning bidder), i.e., this information is not about the seller/service provider. Moreover, the information is acquired after a service is provided regarding compliance of the patient and resulting outcome of the treatment. These claimed features are not even remotely

taught or suggested by Feinberg or any of the prior art of record. With respect to Applicant's claims 54-55, these claims are also directed toward feedback information from a patient (not a *seller*) describing a resultant outcome of the treatment.

Independent claims 50 and 52 distinguish over Feinberg, DiRienzo and Newman et al. at least in the aspect that these independent claims include posting online access to feedback information *from a medical service provider* about a *patient*. Moreover, neither DiRienzo nor Newman et al. nor Feinber, considered either alone or together, disclose or suggest the claimed collecting into a database feedback information obtained from a service provider regarding a patient's compliance with medical procedures or the resultant outcome of providing the proffered medical service to the patient, as respectively set forth in claims 50 and 52.

With respect to independent claims 54 and 56, applicant further contends that these claims, are novel, unobvious and patentably distinct over the cited prior art references with respect to the claimed feature of "registering at least one medical service provider." In addition, neither DiRienzo nor Newman et al. teach or suggest "collecting into a database...feedback information...made available online", as set forth by both claim 54 and 56.

Moreover, in regard to Applicant's claims 56-57, Applicant respectfully contends that the Office Action improperly relies on hindsight reconstruction of the claimed

invention based on the teachings of the instant application in reaching its obviousness determination and that even having the benefit of the teachings of Feinberg along with DiRienzo and Newman et al. it would not have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the system of DiRienzo to provide the transaction feedback database arrangement as set forth in these claims.


The rejection of claims 58-60 under 35 U.S.C. § 103(a) as allegedly being unpatentable over DiRienzo in view of Newman et al. and in further view of Rackson (U.S. Patent 6,415,270) is also respectfully traversed. The Rackson reference is applied as allegedly teaching "an auction coordination method and system in which factors such as timeliness and seller feedback are used to adjust a bid." (See Office Action at page 10.) Applicant respectfully contends that neither the Rackson reference nor any prior art of record, considered either alone or together, teaches or suggests the computing of an adjusted bid price based on a relative value multiplier to a CPT code Relative Value Scale if it is determined that after a bid price acceptance a different or altered procedure or service must be performed, as set forth by Applicant's independent claim 58. In particular, there is simply no teaching or suggestion in the prior art of record of computing an adjusted bid based on CPT codes in the event an altered service is required to be provided to abider. Consequently, Applicant contends that the Office Action improperly relies on hindsight reconstruction of the claimed invention based on the teachings of the instant application in reaching its obviousness determination.

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For at least reasons such as these stated above, applicant respectfully contends that this entire application is in condition for allowance and a formal notice to that effect is respectfully solicited.

Respectfully submitted,

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